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Technical assistance and capacity-building

Development of a national action plan to implement recommendations of human rights mechanisms in Haiti

Report of the United Nations High Commissioner for Human Rights

Summary

The present report is submitted pursuant to the statement by the President of the Human Rights Council on 24 March 2017 (A/HRC/PRST/34/1) whereby he called upon the Government of Haiti to prepare, with the assistance of the Office of the United Nations High Commissioner for Human Rights, an action plan to implement the recommendations of international human rights mechanisms, including those made in the context of the universal periodic review and by the Independent Expert on the situation of human rights in Haiti.

In the report, the High Commissioner describes efforts undertaken by the Government of Haiti to implement recommendations of human rights mechanisms related to pretrial detention, prison overcrowding, criminal legislation, accountability, illiteracy and the situation of internally displaced persons and migrants. The High Commissioner also provides recommendations concerning the elaboration of a national human rights action plan, taking the draft document produced by the authorities in 2014.

Through the human rights component of the United Nations mission in Haiti, the Office of the High Commissioner has continued to provide technical assistance to the Government and other national counterparts to increase the country's compliance with its obligations under international human rights law and submit periodic reports to the human rights treaty bodies, including on the implementation of their recommendations.

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Development of a national action plan to implement recommendations of human rights mechanisms in Haiti

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I. Introduction

1. The present report is submitted pursuant to the statement by the President of the Human Rights Council on 24 March 2017 (A/HRC/PRST/34/1), which called upon the Government of Haiti, with the assistance of the Office of the United Nations High Commissioner for Human Rights (OHCHR), the special procedures of the Council, and the Interministerial Human Rights Committee of Haiti, in close consultation with civil society, the Office of the Ombudsperson and other stakeholders, to prepare an action plan to implement the recommendations made by international human rights mechanisms, including those made in the context of the universal periodic review and by the Independent Expert on the situation of human rights in Haiti.[1] In the statement, the President also requested the Government to establish a national mechanism for reporting and monitoring the fulfilment of targets and indicators related to technical assistance programmes in the field of human rights; determine a timeline for achieving the objectives set; and identify resources to implement the plan. The President requested the High Commissioner for Human Rights to submit a written report on the implementation of the plan to the Council at its the thirty-eighth session.

2. In October 2017, the Security Council established the United Nations Mission for Justice Support in Haiti, mandating it to assist the Government in strengthening rule-of-law institutions, supporting the Haitian National Police and engaging in the promotion and protection of human rights (Security Council resolution 2350 (2017)). Through the human rights component of the Mission for Justice Support, OHCHR has been advocating for the appointment of a high-level human rights focal point in the executive branch to facilitate the development of a national human rights action plan. OHCHR has also continued to support the work of the national human rights institution. The present report is based on the monitoring and technical assistance of the human rights component.

3. In the report, the High Commissioner provides an overview of the preparation of a national human rights action plan. He also addresses concerns raised in the statement by the President of the Human Rights Council related to the implementation of key outstanding recommendations made by various international human rights mechanisms, including the former Independent Expert on the situation on human rights in Haiti, to be considered in the elaboration of an action plan (see A/HRC/31/77, paras. 105–111, and A/HRC/34/73, paras. 99–107). Thus, the report includes information and recommendations about the persisting practice of prolonged pretrial detention, efforts towards the adoption of revised drafts of the Criminal Code and the Code of Criminal Procedure, and the need to eradicate illiteracy, provide adequate housing to internally displaced persons and protect the human rights of Haitian migrants.

4. In 2014, the office of the Minister Delegate for Human Rights and the Fight against Extreme Poverty (hereinafter, "Minister Delegate for Human Rights") and the Interministerial Committee on Human Rights produced a first draft of a national human rights plan, identifying recommendations made by United Nations mechanisms and proposing actions to implement them. While this draft document represented a serious first step towards incorporating human rights in government policies, there has been no progress towards finalizing it. Efforts to adopt a human rights action plan could be resumed by building on the considerable preparation accomplished for the elaboration of the 2014 draft.

II. Context

5. Social grievances, corruption and weak institutions still constitute major obstacles to the realization of human rights in Haiti. With about 59 per cent of the population estimated to be living below the poverty line, the country remains the poorest in the Americas. The

[1] The mandate of the Independent Expert on the situation of human rights in Haiti was established in 1995 by the Commission on Human Rights and was discontinued by the Human Rights Council in March 2017 (A/HRC/PRST/34/1).

realization of human rights is also complicated by the impact of recurrent natural disasters, such as earthquakes and hurricanes. While some areas, mostly in the Port-au-Prince metropolitan area — one of the most affected by the 2010 earthquake — have been rehabilitated, some 37,000 Haitians, including 15,000 children, remained internally displaced as at January 2018, mostly in camps located in the metropolitan area of the capital. In October 2016, Hurricane Matthew greatly affected the south-west of the country and temporarily displaced 175,000 people. Some of them continue to live in precarious conditions, with women and children being particularly vulnerable to exploitation, including human trafficking.

6. As countries in the region have been adopting laws and policies restricting irregular migration, hundreds of thousands of Haitians and persons of Haitian descent living abroad risk being deported to Haiti, some of whom risk becoming stateless. The possibility of mass returns raises human rights concerns, particularly with regard to adequate housing and access to health and education.

III. Institutional framework for the protection and promotion of human rights

A. National human rights mechanisms

7. In 2012, the Government established the position of Minister Delegate for Human Rights, attached to the Office of the Prime Minister. This was the first time a human rights entity was part of the executive branch in Haiti. However, with the change of Government in December 2014, the post was discontinued.

8. On 13 May 2013, the then Prime Minister created by decree the Interministerial Committee on Human Rights, with the mandate of coordinating public policies in the field of human rights and developing a national human rights strategy, including specific measures to enhance the promotion and protection of human rights.

9. The Interministerial Committee was placed under the leadership of the Minister Delegate for Human Rights. It was initially composed of eight ministers: the Minister Delegate for Human Rights, the Minister of the Interior, the Minister for Foreign Affairs, the Minister of Justice, the Minister of Social Affairs, the Minister of Women's Affairs and Women's Rights, the Minister of Public Health and the Minister of Education.

10. The Interministerial Committee has remained in place under the authority of the Prime Minister after the termination of the post of Minister Delegate for Human Rights, but with no entity to lead and coordinate its work.[2] Thus, its work has been essentially at the technical level for the last three years. Its members have the authority to implement the recommendations that fall under their ministries' purviews. This means that only some specific human rights concerns are addressed, mostly in isolation, while the Interministerial Committee is unable to address cross-cutting, policy and strategic issues. A coordinating entity with the necessary mandate and decision-making authority remains critical if the Government is to effectively prepare and implement a comprehensive and strategic national human rights action plan.

11. At the same time, the Interministerial Committee remains responsible for ensuring that Haiti complies with its obligations to submit periodic reports to the human rights treaty bodies. Through the human rights component of the United Nations Stabilization Mission in Haiti and the Mission for Justice Support, OHCHR has conducted activities aimed at building the capacity of the Interministerial Committee to draft such reports and to follow up on the implementation of the recommendations of the treaty bodies. For instance, in

[2] On 2 May 2018, OHCHR was informed by the Permanent Mission of Haiti to the United Nations Office and other international organizations in Geneva that the Ministry of Justice had ensured the coordination of the Interministerial Committee, following the termination of the post of Minister Delegate for Human Rights.

September 2017, two members of the Interministerial Committee[3] attended a one-week "train the trainer" workshop organized by OHCHR. In February 2018, OHCHR delivered a workshop in Port-au-Prince, to build the capacity of the members of the Interministerial Committee to ensure efficient drafting of reports and follow-up on the implementation of the recommendations.

B. National human rights institution

12. The 1987 Haitian Constitution established the Office of the Ombudsperson as an independent national human rights institution with a mandate to protect individuals against abuses by the Government. In 2012, the Parliament adopted the Law on the Organization and Functioning of the Ombudsperson, which further developed the framework of the Office of the Ombudsperson as a national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).[4] The Office of the Ombudspersons is competent to receive and follow up on individual complaints, investigate allegations of human rights violations committed by public entities and ensure respect for the rights of detainees, including by the Haitian National Police.

13. The Office of the Ombudsperson has representatives in all 10 departments of the country. Among the wide range of complaints it receives, many pertain to prolonged pretrial detention and it follows some of these cases directly with prosecutors. The Office of the Ombudsperson has also worked to increase awareness of sexual and gender-based violence, denouncing the issue publicly and advocating for accountability in emblematic cases.

14. A significant part of the work of the human rights component of the Stabilization Mission, the Mission for Justice Support and OHCHR has been to strengthen the capacity of the Office of the Ombudsperson so that it becomes a sustainable pillar of a national human rights protection framework. In September 2017, the human rights component of the Mission for Justice Support organized a training session for members of the Office of the Ombudsperson and the Department of Prison Administration, which is responsible for the management of prisons, on human rights law and systems. In late 2017, the human rights component secured funding from the Joint United Nations Rule of Law Programme to enable the Office of the Ombudsperson to open offices in Jeremie and Saint-Marc. For 2018, the human rights component of the Mission for Justice Support is planning to provide the Office of the Ombudsperson with technical support for the development of its strategic action plan. In March 2018, the Mission for Justice Support agreed to communicate to the Office of the Ombudsperson cases of human rights violations it documents and to coach its officers in monitoring and investigating human rights violations; the Office of the Ombudsperson agreed to share with the Mission for Justice Support its monthly briefings on prolonged pretrial detention and access to justice.

15. Despite the achievements of the Office of the Ombudsperson in recent years, it continues to face challenges. President Moïse appointed a new Protecteur in October 2017, over a year after the expiration of the term of the previous incumbent who, as foreseen in the Law on the Organization and Functioning of the Ombudsperson, continued exercising her functions until then. In line with the applicable procedure, the President of Haiti appoints the Ombudsperson from a list of candidates submitted by the two houses of Parliament. Haitian human rights and women's civil society organizations expressed serious concerns over the independence and integrity of the appointee, with some viewing the appointment as political. The controversy surrounding the appointment was further fuelled by the failure to consult national civil society actors.

[3] The two participants were the coordinator of the Interministerial Committee at the Office of the Prime Minister and the focal point of the Committee at the Ministry of Gender and Women's Rights.

[4] The Paris Principles were adopted in 1993 by the General Assembly. They provide the international benchmarks for the establishment and functioning of national human rights institutions against which such institutions can be accredited by the Global Alliance of National Human Rights Institutions.

16. Following the protracted and controversial appointment process, the Global Alliance for National Human Rights Institutions decided to postpone until 2019 the review of the status (currently "A") of the Office of the Ombudsperson and of its compliance with the Paris Principles — initially scheduled for early 2018 — in order to have sufficient time to assess the performance of the new leadership of the institution.

IV. National human rights action plan

17. In May 2014, the office of the Minister Delegate for Human Rights, in coordination with the Interministerial Committee on Human Rights, produced a first draft of a national human rights action plan. At that time, the Independent Expert on the situation of human rights in Haiti noted that the process offered a unique opportunity to incorporate his recommendations and those of other United Nations human rights mechanisms (see A/HRC/34/73, para. 17).

18. As of April 2018, Haiti had received recommendations from the Committee on the Elimination of Racial Discrimination (January 1991 and April 2001), the Human Rights Committee (October 1995 and November 2014), the Committee on the Rights of the Child (March 2003 and February 2016), the Committee on the Elimination of Discrimination against Women (February 2009 and March 2016), the universal periodic review (March 2012 and December 2016) and the Committee on the Rights of Persons with Disabilities (February 2018).

19. The 2014 draft national human rights action plan represented a serious first step towards incorporating human rights into national policies. It provided an overview of key human rights concerns and their link to recommendations from United Nations human rights mechanisms, including the need to restructure rule-of-law institutions, fight against impunity, improve conditions of detention and build the capacity of the Haitian National Police. The draft also identified poverty as the main source of food insecurity, as well as the need to increase school attendance in order to fight illiteracy. It also highlighted the specific difficulties for advancing the protection of the rights of women, children and the most vulnerable, including people with disabilities, internally displaced persons and lesbian, gay, bisexual, transgender and intersex persons.

20. While the draft national human rights action plan was not made public, throughout 2014 the Office of the Minister Delegate for Human Rights organized consultations to discuss it with mayors and representatives of local authorities (the Municipal Sections Assemblies and the Boards of Municipal Sections). Representatives of some civil society organizations were also consulted. These consultations were held across the country's 10 departments, and represented a significant effort to engage and obtain the views of a wide range of citizens and incorporate human rights concerns specific to each region.

21. The Office of the Minister Delegate for Human Rights did not, however, have the opportunity to act upon the outcome of these consultations given its abolition in December 2014. Since then, the Interministerial Committee has not been in a position to finalize the national human rights action plan. However, the 2014 document could constitute a useful basis to resume efforts towards the preparation and adoption of an up-to-date national action plan for the sustainable protection of human rights.

22. Since December 2014, the leadership of the Stabilization Mission, and subsequently of the Mission for Justice Support, has consistently advocated for the appointment of a high-level human rights focal point within the Government, as has the Secretary-General in reports to the Security Council (see S/2017/604, para. 21). Following the adoption of the above-mentioned statement by the President of the Council, the High Commissioner wrote to the Prime Minister with a similar request, on 8 June 2017 and 31 January 2018, stressing the importance of strong leadership to ensure the development of a national human rights action plan. He further informed the Prime Minister that the human rights component of the peace mission in Haiti remained available to provide the necessary technical assistance for the preparation of such a plan. At the time of writing the present report, the Government had not responded to the High Commissioner.

V. Rule of law

A. Human rights violations in the criminal justice system

Prolonged pretrial detention

23. The 2014 draft national human rights action plan acknowledged that pretrial detention was one of the most serious human rights concerns in Haiti, noting six recommendations that United Nations human rights mechanisms had issued on this issue and listing potential ways to address it.

24. In 2014, 74 per cent of the detainees in the national penitentiary system were awaiting trial, including 37 per cent for more than two years.[5] By 2016, 63 per cent of inmates were estimated to be in pretrial detention, and the average duration a detainee would spend in such detention had almost doubled since 2014 — from 624 to 1,100 days.[6] This increase partly resulted from the failure of judicial authorities to process cases and the backlog of cases on prolonged pretrial detention has continued to increase as more individuals have been arrested.

25. Prolonged pretrial detention violates the right to a fair trial under article 8 of the American Convention on Human Rights[7] and article 9 (3) of the International Covenant on Civil and Political Rights, which stipulates that anyone arrested or detained on a criminal charge should be brought promptly before a judge or another officer authorized by law to exercise judicial power and entitled to trial within a reasonable time or to release.

26. The scourge of prolonged pretrial detention in Haiti is the result of various factors, including extremely slow judicial proceedings, due to a shortage of investigative judges and the consequent failure to observe criminal procedure deadlines. Another issue is the absence of a follow-up system for cases assigned to judges who are replaced, which often leads to judiciary cases and defendants being forgotten by the system. In addition, some of the judges lack the necessary qualifications to adequately fulfil their duties and do not dedicate sufficient time to handle the cases assigned to them, reportedly due also to absenteeism.

27. Oversight mechanisms for the justice sector remain weak. In practice, the near-absence of administrative supervision of judges allows for underperformance without repercussions. In March 2018, in one of the few instances in which the Superior Council of the Judiciary revoked a judge pending an investigation into allegations of corruption in Les Cayes (South Department), the judge was not replaced, which directly impacted the case files of detainees on pretrial !etention.

28. On 5 September 2016, then President Privert established a commission on pretrial detention with a view to ending this practice. This body was mandated to prepare a list of all inmates on pretrial detention in the country's 18 jurisdictions and to make recommendations on the cases identified as prolonged pretrial detention. The commission was composed of nine members, including representatives of the Superior Council of the Judiciary, the Bar Association and human rights organizations. However, it was short-lived and did not have enough time to produce the expected results. Indeed, with the change of Government in February 2017, it was disbanded and replaced with a presidential

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[5] See United Nations Stabilization Mission in Haiti and OHCHR, "Rapport semestriel sur les droits de l'homme en Haïti: janvier–juin 2014" (December 2014), para. 41. Available at www.ohchr.org/Documents/Countries/HT/ExecutiveSummaryMINUSTAH-OHCHRJanuary_june2014_fr.pdf.

[6] See United Nations Stabilization Mission in Haiti and OHCHR, "Rapport sur la situation des droits de l'homme en Haïti: 1er juillet 2015–31 décembre 2016" (July 2017), para. 54. Available at www.ohchr.org/Documents/Countries/HT/HaitiAnnualReport2015-2016_FR.pdf.

[7] The jurisprudence of the Inter-American Court of Human Rights stipulates that any pretrial detention that exceeds two years constitutes a violation of the right to a fair trial. For more details, see United Nations Stabilization Mission in Haiti and OHCHR, "Rapport semestriel sur les droits de l'homme en Haïti: janvier–juin 2014", para. 41.

commission of inquiry on the situation of detainees in prison settings — which operated for three months (see paragraph 34 below).

29. As part of its mandate, the Mission for Justice Support has continued to work with national authorities, including the judiciary, to find ways to reduce situations of prolonged pretrial detention. This has involved improving the capacity of judges to efficiently handle cases, including by stricter compliance with legal deadlines. The Mission for Justice Support has also been supporting efforts to strengthen case management performance by facilitating dialogue with all actors of the penal chain, including the police, prosecutors, judges and legal aid lawyers.

Prison overcrowding

30. Together with prolonged pretrial detention, prison overcrowding is a major human rights concern in Haiti. Pretrial detention directly contributes to prison overcrowding and negatively affects the conditions of detention.[8] Through its monitoring, the human rights component of the Mission for Justice Support has found that, in instances in which prison facilities are not available, police stations are also used to hold detainees.

31. It was noted in the 2014 draft national human rights action plan that, while the Government had attempted to address that issue, the measures adopted had proved insufficient to significantly improve the situation. Among the proposed actions, the draft action plan highlighted the need to build prisons in accordance with international standards and to adopt a legal aid programme to enable courts to process these cases swiftly.

32. Most prison facilities lack adequate sanitation and access to health care. This situation has been described by several human rights mechanisms, including the Human Rights Committee,[9] as amounting to cruel, inhuman and degrading treatment. Ongoing monitoring of prisons by the human rights component of the Mission for Justice Support indicates that the number of deaths in custody has increased over recent years, partly due to the lack of access to adequate health care. For example, in the Les Cayes prison, the number of deceased detainees almost doubled in one year, from 8 in 2016 to 14 in 2017. In several instances, prison authorities have reportedly failed to inform the family of the deceased detainee of the death.

33. While overcrowding and poor prison conditions affect all detainees, they have a disproportionate impact on women, children and inmates with disabilities. In prison, women and children are at heightened risk of violence and abuse. Furthermore, children are deprived of their right to education, and women's access to health, in particular sexual and reproductive health services, is extremely limited. For example, in March 2018, through its monitoring, the human rights component of the Mission for Justice Support found that about 85 per cent of the detainees in Les Cayes[10] were in pretrial detention in the overcrowded prison. Some 25 per cent were children between the ages of 14 and 17 detained for misdemeanours such as the theft of a coconut.

34. As previously noted (see paragraph 28 above), on 25 February 2017, the Government tried to address the issue of prolonged pretrial detention with the creation of the presidential commission of inquiry on the situation of detainees in prison settings, created by President Moïse in response to the growing number of deaths in detention. On 15 May 2017, after the termination of its mandate, the commission presented a report to the Cabinet of the President. Among its findings, it observed that the average available space for detainees in Haitian prisons was 0.40 square metres and it described deplorable conditions, such as a lack of potable water, adequate food, bedding and adequate medical care for detainees with physical and mental disabilities. The mandate of the commission was not renewed and there has been no durable action taken on its findings, many of which

[8] In 2015, the High Commissioner identified excessive recourse to pretrial detention as one of the main causes of prison overcrowding in Haiti (see A/HRC/30/19, para. 37).

[9] See CCPR/C/HTI/CO/1, para. 15.

[10] Some 574 of the 676 detainees.

echoed those of the Independent Expert (see A/HRC/31/77, paras. 103–111, and A/HRC/34/73, paras. 99–107).

B. Need for reform of criminal legislation

35. While a wide range of factors contribute to the overall inefficiency of the criminal justice sector, which consequently result in human rights violations such as prolonged pretrial detention, outdated criminal legislation is at the core of the many challenges. This was raised in the 2014 draft human rights action plan, in which several relevant recommendations of international human rights mechanisms were highlighted.

36. In 2012, in an attempt to address this issue, former President Martelly set up a presidential commission to reform the Criminal Code and the Code of Criminal Procedure. The commission benefited from the efforts of a previous working group that operated from 2009 to 2011, under the auspices of the Minister of Justice.

37. In 2015, the commission presented a revised draft of the two codes to a range of actors, including members of the five courts of appeals, lawyers and representatives of civil society organizations. The human rights component of the Stabilization Mission then submitted comprehensive comments to the commission, including to ensure that the drafts would comply with international human rights norms and standards. In October 2015, the commission submitted the revised texts to the President. In April 2017, the drafts were presented to the Minister of Justice who, as required by law, transmitted them to Parliament for debate and voting. As of April 2018, the two houses of Parliament had not discussed the drafts.

38. A bill on legal aid has been under debate in the Senate since 2017. The majority of detainees cannot afford legal counsel and can spend years in pretrial detention without anyone to represent them in court. Following the vote of the Senate on 17 August 2017, on 21 February 2018, the lower house of Parliament (the Chamber of Deputies) voted for a number of changes to the bill, which required the Senate to conduct a second round of voting. As of April 2018, the Senate had not yet taken action on the bill.

C. Lack of accountability for human rights violations committed by the police

39. Noting the recommendations of the universal periodic review of March 2012, the 2014 draft national human rights action plan acknowledged the need for the Haitian National Police to comply with human rights law, including by strengthening the capacity of the Haitian National Police General Inspectorate and ensuring human rights training for new recruits. Nevertheless, operations conducted by the Haitian National Police, which remains the main entity responsible for security in the country, continue to pose serious human rights concerns.

40. In recent years, the police have been responsible for human rights violations on multiple occasions and the judicial authorities have failed to hold the alleged perpetrators accountable. These patterns are illustrated by two incidents that were investigated by the human rights component of the Mission for Justice Support, which occurred in Lilavois in October 2017 and in Grand Ravine in November 2017. The human rights component has documented several other instances of officers of the Haitian National Police having resorted to excessive use of force, which caused civilian casualties, including among children.

41. On 12 October 2017, the Brigade for Departmental Operation and Intervention, a specialized unit of the Haitian National Police, conducted an unauthorized search operation in Lilavois (West Department). The Brigade, which was found responsible for serious human rights violations in the past,[11] appears to have conducted the operation to avenge for

[11] See United Nations Stabilization Mission in Haiti and OHCHR, "Rapport sur la situation des droits de

the murder of a colleague some hours earlier. After the operation, three civilians were found dead with gunshots to the head, suggesting summary executions. Nine other civilians, including three women, were severely beaten by the Haitian National Police during the operation and at least two of them were threatened with summary execution. The Brigade arrested the nine individuals on charges of the murder of a police officer. During the operation, officers of the Brigade also arbitrarily assaulted local residents, looted shops and burned down three housing complexes.

42. On 13 November, the Haitian National Police, with support from the United Nations police, conducted an operation in Grand-Ravine (West Department) to neutralize gang activity in the area. After the planned operation ended and the United Nations police were preparing to withdraw, an exchange of fire ensued between the Haitian National Police and individuals hiding in the school, which resulted in the death of two policemen and three being injured. During the operation, the Haitian National Police reportedly killed eight unarmed individuals, including 2 women, beat 3 school staff members and arrested 32 individuals. Several of those killed were found with gunshots to the head, suggesting summary executions. One civilian has remained missing following these events, which amounts to a forced disappearance. The use of tear gas in a school in which students and teachers were present further suggests that the Haitian National Police resorted to excessive use of force.

43. The judicial authorities have not yet taken steps to hold those responsible for human rights violations committed in the context of these two operations accountable for their actions. The General Inspectorate conducted administrative inquiries into both incidents. In the case of Lilavois, three officers of the Brigade were placed in administrative confinement on 10 November 2017. In the case of Grand Ravine, the General Inspectorate inquiries concluded that human rights violations were committed and several administrative measures were taken against some of the implicated officers of the Haitian National Police. These measures included suspension without pay, redeployment or removal from the police force. While the General Inspectorate and judicial authorities have indicated that those responsible are expected to face trial, at the time of drafting the present report, no judicial investigation has been initiated in the case. These incidents are emblematic of wider patterns of violations committed by the police in Haiti and demonstrate the urgent need to ensure accountability.

D. Impunity for past gross human rights violations

44. For almost 30 years, during the Duvalier regime, massive and grave human rights violations were perpetrated, including violations of the rights to life, liberty, integrity, justice, and freedom of expression (see A/HRC/25/71, paras. 58–59). Human rights violations, including civil rights and liberties, persisted after Jean-Claude Duvalier left the country in 1986 (see A/49/513, annex, para. 6). In 1991, the Armed Forces staged a coup d'état that ousted then-President Aristide, the first democratically elected president. Under the military dictatorship, State agents regularly carried out summary executions, forced disappearances, arbitrary arrests and torture (see E/CN.4/1996/94, para. 8). Acts of violence perpetrated by groups supporting or opposing President Aristide were also denounced (see A/HRC/31/77, para. 75).

45. None of the perpetrators of these violations has been punished. In 1995, after being reinstated, President Aristide created the National Commission for Truth and Justice to investigate human rights abuses that took place under the military rule between 1991 and 1994. Its final report, produced in February 1996, shed light on the violations committed by the Armed Forces. However, no similar body has documented violations committed before 1991.

46. For years, victims attempted to have their complaints of human rights violations decided by a court of law. In February 2014, in a landmark decision, a court of appeal

l'homme en Haïti: 1er juillet 2015–31 décembre 2016", para. 23.

declared admissible the accusation of crimes against humanity against Duvalier and some of his associates on the grounds that customary human rights law is part of Haitian law. After Duvalier's death in October 2014, victims' representatives argued that proceedings could continue against the co-defendants but no progress has since been registered. In 2016, taking note of the lack of investigations since 2014, the Human Rights Committee urged the Government to provide information on the efforts to bring to justice all those responsible for the serious violations committed during the Duvalier presidency.[12]

47. Impunity denies victims their rights to truth and justice and undermines public confidence that institutions will protect their rights. Acknowledging that impunity for past gross human rights violations is an obstacle to democracy, the 2014 draft national human rights action plan proposed a set of actions to promote accountability and provide redress to the victims.

48. In March 2017, the Independent Expert on the situation of human rights in Haiti proposed the establishment of a truth, justice and redress commission to shed light on past violations and provide reparations to the victims and the country as a whole so as to strengthen the country's capacity to build a more egalitarian, justice-based society (see A/HRC/34/73, paras. 74–75). The 2014 draft national action plan proposed the resumption of the 1995 National Commission for Truth and Justice. It would be important for the national action plan to consider a transitional justice mechanism that would examine all past human rights violations.

49. In September 2017, OHCHR organized a workshop in Port-au-Prince on the fight against impunity for past human rights violations, which was attended by over 100 participants from different countries, representatives of the Office of the Ombudsperson, the Interministerial Committee and civil society organizations. Among the main challenges identified in pursuing accountability were the collection of evidence, the lack of capacity and will of magistrates, and victims and witnesses' fear of reprisals. Some of these challenges, including the need for protection of victims and witnesses, were identified in the 2014 draft national action plan.

VI. Economic, social and cultural rights

A. Persistence of illiteracy

50. Noting that Haiti has one of the highest illiteracy rates in the western hemisphere, the 2014 draft national action plan identified various factors, including the fact that some 20 per cent of children aged between 6 and 12 did not regularly attend school, the high number of students per class, the lack of adequate training of teachers and the fact that the majority of schools were private and did not follow a uniform curriculum.

51. In a country in which social grievances often stem from poverty, high illiteracy rates are one of the most visible indicators of inequalities. Illiteracy denies individuals their right to education and deprives them of an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle that can enable economically and socially marginalized individuals to lift themselves out of poverty.[13] Through education, people can strengthen their abilities to enjoy other economic and social rights, including the rights to adequate housing, health and food.

52. While no up-to-date statistics are available, in 2013, it was estimated that approximately half of all Haitians were illiterate;[14] even though the number of children

[12] Letter dated 7 December 2016 from the Human Rights Committee's Special Rapporteur for follow-up to concluding observations providing an update on the concluding observations of 21 November 2014 (CCPR/C/HTI/CO/1). Available at http://ccprcentre.org/files/documents/INT_CCPR_FUL_HTI_25997_F1.pdf.

[13] Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999) on the right to education.

[14] See A/HRC/28/82, para. 26, footnote 2.

attending primary school had steadily increased over the past decades, from 47 per cent in 1993 to 88 per cent in 2011.[15] In 2012, the United Nations Children's Fund estimated that some 74.4 per cent of males and 70.5 per cent of females aged between 15 and 24 in Haiti were literate.[16] It is essential to pursue efforts to eradicate illiteracy, both in Creole and French, the latter being the official language used in all administrative and official matters.[17]

53. Finances represent the main barrier to access to education. While the Government provides schooling free of charge, public funding is insufficient to provide adequate access to students, and training and pay for teachers. Consequently, 80 per cent of all schools are private, i.e. fee-based and families without financial resources are unable to cover the costs. In addition, education-related fees, such as transport and school supplies, also contribute to the financial barrier. Also, the quality of education provided in public schools is generally considered to be lower than in private schools, and this problem is compounded by the frequent strikes of teachers protesting over low wages and students demonstrating for better education. For example, in February and March 2018, high-school students held demonstrations in Petit-Goâve, which subsequently spread to other parts of the country. In addition, children from low-income families often miss school several days a week as they are compelled to work to help their parents. In rural areas, the insufficient number of schools and the physical distance between the family homes and schools also prevents children from accessing education. As noted by the Committee on the Elimination of Discrimination against Women, girls in rural areas are at a particular disadvantage as poverty, child labour, lack of adequate sanitary facilities and potable water, and the high rate of sexual violence and harassment on the way to and from school all contribute to the progressive decline in the completion rates of girls in secondary school.[18]

B. Situation of internally displaced persons

54. In 2014, the Independent Expert on the situation of human rights in Haiti identified the situation of internally displaced persons as one of five factors leading to human rights violations (see A/HRC/25/71). Also in 2014, the draft national action plan recommended addressing the recommendations of international human rights mechanisms concerning internally displaced persons, particularly with regard to the right to adequate housing. In addition to efforts to build housing units, the draft recommended the creation of employment opportunities that would give Haitians the purchasing power to buy or rent property. Efforts by the Government and humanitarian partners have succeeded in greatly reducing the number of internally displaced persons since 2010. However, many such persons continue to live in makeshift camps in which they also remain exposed to natural disasters and a range of human rights violations.

55. Natural disasters have been the main drivers of internal displacement in Haiti due to its location in a seismic region and its extensive coastal areas exposed to hurricanes. Poor quality construction, deforestation and a growing population have exacerbated the devastating impact of natural disasters in recent years, including destruction and displacement. Of the 1.5 million people displaced by the 2010 earthquake, some 37,000 remained in 26 camps as at March 2018, mostly around the Port-au-Prince metropolitan area, awaiting a durable solution. With time, the precarious living conditions in the camps have further deteriorated. At least 17 of the camps do not have adequate sanitary conditions. Some are deprived of toilets and others do not have regular access to potable water, which presents serious public health risks, including spreading water-borne diseases, particularly since the outbreak of cholera in 2010.

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[15] Ibid.

[16] See https://www.unicef.org/french/infobycountry/haiti_statistics.html#117.

[17] In 2015, the Independent Expert raised concerns over the fact that an ongoing literacy campaign focused exclusively on Creole (see A/HRC/28/82, para. 30).

[18] See CEDAW/C/HTI/CO/8-9, para. 29.

56. Over the years, the precarious living conditions and high rates of unemployment among people displaced by the 2010 earthquake have led to the breakup of many families. Men often left to seek work, leaving behind their families. As a result, some 70 per cent of internally displaced persons in the 26 camps is composed of women and children. Women heads of household struggle to provide for their families as they must balance the need to work with caring for their children, many of whom are not attending school. In such precarious conditions, women and children are also vulnerable to a range of violations, including sexual violence and human trafficking.

57. In October 2016, the first landfall of Hurricane Matthew hit the rural area of south-west Haiti, killing some 550 persons and displacing half a million. While most of the displaced were able to return home or at least to their region of origin, in early 2018, some 1,600 people remained displaced, living in temporary settlements and evacuation centres.[19]

58. Recovery efforts can only be sustainable if human rights considerations are duly taken into account. In a context in which further natural disasters are expected, the incorporation of human rights considerations into disaster risk reduction policies and recovery plans would contribute to mitigating the risks of human rights violations, in particular for the most vulnerable.

VII. Situation of Haitian migrants

59. Haiti has a population of 11 million, while 2 million Haitians are estimated to be living abroad. The Dominican Republic and the United States of America host the majority of Haitian migrants. Other countries with significant Haitian immigrant populations include the Bahamas. These three States have adopted policies that could result in large-scale deportations of Haitians. While none of them — nor Haiti — have ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, all are bound by the International Bill of Human Rights and customary international law obligations.

60. In 2013, the Dominican Republic counted some 458,000 Haitian migrants in addition to another 736,730 persons, including 355,640 children, considered as a "transborder population" (border dwellers). That year, the Dominican Constitutional Court ruled that people born in the Dominican Republic after 1929 who did not have at least one parent of Dominican descent would not have the right to Dominican nationality. The Inter-American Court of Human Rights, the Inter-American Commission on Human Rights and the Human Rights Committee denounced this ruling as discriminatory. In 2014, the Dominican authorities set up a National Regularization Plan for Foreigners to rectify some of the shortcomings of the Court's decision, but the number of migrants deported or forced to return from the Dominican Republic following the expiration date of the registration period according to the National Regularization Plan in July 2015 increased by 45 per cent from December 2016 to October 2017 — namely, from 158,800 to 230,300.[20]

61. The second largest Haitian diaspora community in the Caribbean lives in the Bahamas, with 40,000 Haitians registered in 2013. In November 2014, the Bahamas reformed its migration law establishing that all irregular migrants — most of whom were Haitians — had to leave the territory to regularize their migration status, including to obtain passports in their country of origin. The Government stopped the deportations following concerns over statelessness from the Inter-American Commission on Human Rights, in 2015. Yet, in November 2017, the Prime Minister of the Bahamas announced the resumption of the implementation of the law in 2018.

62. Some 59,000 Haitians moved to the United States in the aftermath of the 2010 earthquake under Temporary Protected Status, a legal immigration status for countries

[19] Humanitarian Country Team, "Revised Humanitarian Response Plan, January–December 2018: Haiti" (January 2018). Available at https://reliefweb.int/report/haiti/haiti-revised-humanitarian-response-plan-january-december-2018.

[20] Ibid.

experiencing dire conditions. In November 2017, the United States administration announced that it would rescind Temporary Protected Status and that all Haitian migrants previously protected under this programme would have until July 2019 to leave the United States.

63. Given the country's economic vulnerabilities and the lingering impact of natural disasters, mass deportations, collective expulsion and other forced or coerced returns of people to Haiti are largely unsustainable besides representing a threat to the human rights of Haitian migrants. Without adequate planning, the security and stability of Haiti could be impacted by the large numbers of deportations and spontaneous returns. Currently, most deportees arrive in Haiti without any financial resources and many have been separated from their family members who remain in the country of destination. Most settle in the departments along the Haitian-Dominican border, namely the North-East, the Centre, the South-East and the West Departments. Women and children, who account for 58 per cent of returnees, are particularly vulnerable. Increased traffic through irregular border crossings has led to increased crime rates, exposing women and children to increased risks of sexual and gender-based violence and human trafficking. Furthermore, endemic and exploitative practices, such as the exploitation of children as domestic servants, transactional sexual exploitation of women and children, and various forms of bonded labour affecting men, women and children, remain prevalent across Haiti and the Dominican Republic.

64. Returnees are economically vulnerable and often perceived as economic and social burdens. Due to the lack of resources, the Government of Haiti has limited capacity to provide them with adequate reception, housing, employment, education and health facilities. In 2015, in order to address these issues, the Humanitarian Country Team and the United Nations country team set up a working group with Government entities and civil society organizations. The working group has continued to operate and has developed annual action plans focusing on the protection of returnee migrants, providing coordinated and complementary responses to identified protection issues. The working group has also been advocating for the ratification by Haiti of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

65. As the risk of mass deportation is growing and expected to continue at a scale that will overwhelm the capacity of Haiti, some human rights-based urgent response is required and could be incorporated as part of a national human rights action plan.

VIII. Conclusions

66. The draft national human rights action plan developed in 2014 serves as a strong basis to elaborate a comprehensive national human rights strategy.

67. The prolonged absence of a high-level human rights focal point in the executive branch of the Government represents an obstacle to the development and adoption of a comprehensive and strategic national human rights action plan that would aim at addressing key outstanding concerns raised by international human rights mechanisms over several years. Leadership is essential for the effective and sustainable protection of human rights.

68. The role of the Office of the Ombudsperson remains key to promoting and protecting human rights, including to addressing grievances and human rights violations. The human rights component of the Mission for Justice Support will continue its support for the Office of the Ombudsperson to ensure it has the necessary means to fulfil its mandate.

69. The human rights component of the Mission for Justice Support remains engaged in providing technical assistance to the authorities of Haiti for the development of a national human rights action plan and implementation of recommendations from the United Nations human rights mechanisms.

IX. Recommendations

70. The High Commissioner for Human Rights recommends that the Government of Haiti:

(a) Ensure that a high-level human rights focal point in the executive branch, with the authority to lead the Interministerial Committee on Human Rights, resumes the development of and finalizes the national human rights action plan; and that cabinet ministers follow up on recommendations of the international human rights mechanisms;

(b) Take urgent measures to reduce the number of inmates who have been in pretrial detention for over two years, including by implementing the recommendations of the presidential commission of inquiry on the situation of detainees in prison settings;

(c) Improve oversight, through the Superior Council of the Judiciary, of investigating judges assigned to cases in which those accused have been detained for more than two years;

(d) Ensure that the adoption of the Criminal Code, the Code of Criminal Procedure and the law on legal aid are on the agenda of forthcoming parliamentary sessions;

(e) Adopt urgently measures to facilitate the provision of adequate housing for persons displaced by the 2010 earthquake and Hurricane Matthew who are still living in camps and other temporary settlements;

(f) Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

(g) Continue efforts to eradicate illiteracy, bearing in mind the specific challenges faced by girls in rural areas;

(h) Ensure individual accountability through the appropriate judiciary measures for human rights violations committed by members of the Haitian National Police, including in relation to the serious incidents reported in Lilavois and Grand Ravine in October and November 2017;

(i) Establish transitional justice mechanisms to shed light on past large-scale, systematic human rights violations and repair the damage caused to the victims and the country as a whole, so as to strengthen society's capacity to build a more egalitarian, justice-based society;

(j) Promote and ensure accountability for past gross human rights violations, including by resuming judicial proceedings against the alleged perpetrators;

(k) Ensure that disaster risk reduction policies and recovery plans incorporate human rights considerations to mitigate the risks of human rights violations, particularly for the most vulnerable.

71. The High Commissioner recommends that the Human Rights Council continue to pay close attention to the human rights situation in Haiti given the outstanding human rights issues and monitor progress made in the development and implementation of a national human rights action plan.